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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/172426

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 01, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on April 14, 2016, at Sheboygan, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's prior authorization request for Physical Therapy.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

█  
█

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], PT, DPT

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Sheboygan County.

2. On January 7, 2016 the petitioner submitted a prior authorization request for Physical Therapy (PT) services. She requested PT services one time per week starting January 21, 2016. The Department requested additional documentation, which the petitioner's provider later submitted.
3. On February 2, 2016 the Department sent the petitioner a notice stating that they had modified her prior authorization request for PT services.
4. On March 3, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
5. The petitioner is 20 years old and suffers from Limb Girdle type Muscular Dystrophy. This causes decreased range of motion.
6. The petitioner has been receiving PT services for years. Most recently, a PT prior authorization that requested PT services one time per week was modified to one time per month. The petitioner is enrolled in the IRIS program. The IRIS program continued to pay for weekly PT services for the petitioner. The petitioner also has 24 hours of private duty nursing authorized. Her father is one of her private duty nurses. The private duty nurses do home carry over stretches and activities daily as tolerated. Despite these interventions the petitioner continues to decline in physical alignment. Her range of motion measurements in her lower extremities have remained semi-stable, however her trunk flexion tightness continues to increase. The petitioner's disease is a degenerative disease.
7. In ALJ Ishii's previous decision, upholding the reduction in frequency of PT services, she stated:  

If it is, in fact, the case that the Petitioner is so fragile that a physical therapist must perform all of her range of motion exercises, such that a home exercise program is not appropriate, [the provider] should obtain medical documentation to support that claim and include it in the new prior authorization request.
8. This new prior authorization request has an attachment, which states:  

Attached is written home program for [the petitioner]. Additionally [the petitioner's] father who serves as one of [her] nurses is present for all sessions. Constant verbal discussions occur with father and [the petitioner] regarding positioning in a reclined position in bed to elongate trunk and hip flexors, positioning of lower extremities in extension in wheelchair, gentle input into shoulders, upper traps and pectorals due to neck pain and tightening. With consideration for [the petitioner's] posture, trach and extreme muscle tightness home activities are best demonstrated in person, as on occasion excessive and painful elongation has been performed by caregivers.

## **DISCUSSION**

Physical therapy is covered by MA under Wis. Admin. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

In reviewing a PA request the DHCAA must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:

- 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability; ...
- 3. Is appropriate with regard to generally accepted standards of medical practice; ...
- 6. Is not duplicative with respect to other services being provided to the recipient; ...
- 8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
- 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

For therapy to be medically necessary, a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

In this case the petitioner has not improved in therapy. I understand that the petitioner has a degenerative disease, and that the goal of therapy would be to maintain her current functioning level as long as possible. There comes a point when a home carry over program with minimal PT sessions is appropriate. This is extremely true in this case where the petitioner has 24 hours of private duty nursing services. Private duty nurses are trained medical professionals. One would expect these medical professionals to be able to perform a home PT program better than the average parent who has little to no medical training.

The petitioner's mother testified that only a trained therapist can perform some of the stretches on the petitioner. This was consistent with the petitioner's mother's testimony at the last hearing. ALJ Ishii issued a decision noting that if this is the case, then the provider should submit medical documentation showing that a home therapy program is ineffective for this petitioner. The petitioner's provider did not do that here. In fact, the provider included the written home therapy program noting that the petitioner's father, who is also her private duty nurse, performs this home therapy program with her. The provider also stated that "on occasion excessive and painful elongation has been performed by caregivers." However, the provider also highlights that "constant verbal discussions occur with [the petitioner and her father when he is performing the home program]. The petitioner is able to communicate with a caregiver if there caregiver is not correctly performing the home therapy program.

Following the hearing the petitioner submitted a letter from the petitioner's PT. This letter stated the following:

Due to her medical fragility, as well as the progressive nature of her disease, therapy services with highly skilled physical and occupational therapists familiar with muscular dystrophy is of benefit to her for the purposes of preserving muscle and joint function, preventing further contractures and skin breakdown, and adapting alternative methods to perform her daily activities, within the limits of her musculoskeletal impairments as well as her cardiorespiratory limitations. While her family is dedicated to assisting her in any ways they can, they are not medically trained and her medical fragility warrants regular contact with trained professionals.

This letter is inconsistent with the above discussed information regarding her home therapy program. The information with the home therapy program is more detailed, more credible, and more reliable. Given the degenerative nature of the petitioner's disease, I understand the need for some PT sessions in conjunction with the home therapy program. I agree with the Department though that once weekly PT sessions are not medically necessary as the term is used under the MA program.

**CONCLUSIONS OF LAW**

The Department correctly modified the petitioner's prior authorization request for Physical Therapy.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

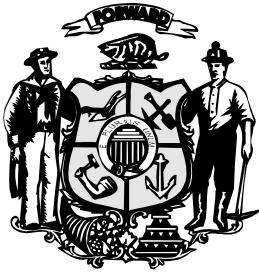
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 27th day of May, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 27, 2016.

Division of Health Care Access and Accountability